

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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MONADNOCK CONSTRUCTION, INC.,

Case No.: 16 CIV. 00420 (JBW)
ECF Case

Plaintiff,

-against-

WESTCHESTER FIRE INSURANCE
COMPANY,

Defendant.

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WESTCHESTER FIRE INSURANCE
COMPANY,

Third-Party Plaintiff,

-against-

GLASSWALL, LLC, UGO COLOMBO, and
SARA JAYNE KENNEDY COLOMBO,

Third-Party Defendants.

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**DEFENDANT WESTCHESTER FIRE INSURANCE COMPANY'S
REQUEST FOR JUDICIAL NOTICE OF THE APRIL 30, 2018 ORDER DISMISSING
WESTCHESTER AS A DEFENDANT IN THE CONSOLIDATED FLORIDA
LAWSUITS IN WHICH THE PARTIES IN THIS
CASE ARE ALSO PARTIES**

Defendant Westchester Fire Insurance Company ("Westchester") requests this Court to take judicial notice of the April 30, 2018 Order ("Order") issued in three cases consolidated in the Circuit Court of the Eleventh Judicial Circuit of Florida ("Florida Consolidated Cases"), Case Nos. 15-06405-CA 44, 14-05447 CA 44, and 14-02090 CA 44, which involve the same parties as this Action.

The Honorable William L. Thomas, Circuit Judge presiding over the Florida Consolidated Cases, issued the Order. It granted Westchester's Motions to Dismiss it as a

defendant in each of the Florida Consolidated Cases on the basis that the mandatory forum selection provision in the Agreement of Indemnity (executed by Ugo Colombo, Sarah Jayne Kennedy Colombo and Glasswall, LLC) requires litigation concerning Westchester's bonds, the bonded project, and the Agreement of Indemnity to occur in the courts of New York. The Order reads as follows:

UPON CONSIDERATION OF Defendant Westchester Fire Insurance Company's Motions to Dismiss Based on Mandatory Forum Selection Clause, and the Court having heard argument of counsel at a hearing held in this matter on Monday, April 30, 2018, it is hereby **ADJUDGED**: Granted. These consolidated cases against Westchester Fire Insurance Company are dismissed for the reasons set forth in the record transcribed during the hearing.

Attached as Exhibits A and B to the Declaration of John Sullivan (the "Declaration") filed herewith are, respectively, the Order and the transcript of the April 30, 2018 hearing referenced in the Order.

On June 1, 2018, the time to appeal the Order expired. The Order is now final.

A court may judicially notice facts that are "not subject to reasonable dispute because [they] . . . can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned." Fed. R. Evid. 201(b)(2). Once a court has been supplied with the necessary information, taking judicial notice is mandatory. Fed. R. Evid. 201(d). Courts in this Circuit routinely take judicial notice of public records such as court proceedings. *See Roe v. Johnson*, 334 F. Supp. 2d 415, 420 (S.D.N.Y. 2004); *Rothman v. Gregor*, 220 F.3d 81, 91 (2d Cir. 2000) (taking judicial notice of pleadings in another lawsuit as a public record); *Vaughn v. Consumer Home Mortg. Co.*, 470 F. Supp. 2d 248, n. 8 (E.D.N.Y. 2007) ("It is, however, well established that courts may take judicial notice of court records."); *Hayes v. Perotta*, 751 F. Supp. 2d 597, 599 (S.D.N.Y. 2010) (finding that a court may take judicial notice of material facts from court proceedings, including transcripts and judicial opinions).

There is no basis to dispute that the Florida Circuit Court dismissed Westchester as a defendant in the Consolidated Florida Cases and that the Order is now final. Westchester's dismissal from the Florida lawsuits is relevant to motions pending in this Court, particularly the motions to dismiss filed on behalf of Ugo Colombo and Sara Jayne Kennedy Colombo. Docket No. 80. Accordingly, Westchester requests this Court to take judicial notice of the Order in accordance with Fed. R. Evid. 201.

Dated: New York, New York
June 6, 2018

COZEN O'CONNOR

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